Wrong Way on the ADA

Michigan court flunks HIV discrimination test

December 1, 1998 By Arthur S. Leonard

Last June, the U.S. Supreme Court ruled in *Bragdon v. Abbott* that the Americans With Disabilities Act (ADA) can be used to fight discrimination against people with HIV. Because almost every state has a disability discrimination law similar to the ADA, the *Bragdon* ruling is an important precedent on both federal and state levels. But statutory protection is only as good as statutory interpretation. Getting the statute is just the start of the battle. An unsympathetic or ignorant court can undermine a statute's protective value. A post-*Bragdon* decision by the Michigan Supreme Court unhappily illustrates this point.

The court ruled on July 31 that a restaurant (and presumably other food service establishments) could suspend a waitress rumored to have AIDS until she proved that she was medically fit to continue working.

Michigan has a civil rights law almost identical to the ADA, and the court claims that its decision is consistent with the federal statute. But the ruling falls far short of that assertion.

In 1987, Dorene Sanchez, a waitress at the Paradise Family Restaurant in Coldwater, Michigan, confided to a friend that she thought she "was with someone who had—*possibly* had—AIDS." The friend had loose lips, and soon rumors that Sanchez had AIDS swirled through Coldwater, a town of 9,600 in rural southern Michigan.

Upon getting the gossip, restaurant owner Kostas Lagoudakis was terrified. "AIDS is a big thing," he testified. "I got kids into my place. I got family…. If somebody comes close to me and I know he has AIDS, I'm going to run away." Sanchez claims that Lagoudakis told her not to return to work until she provided written proof that he could show customers that certified that she was "healthy from AIDS." Sanchez, who had tested negative, decided not to return to the restaurant. Instead, she sued Lagoudakis in state court, claiming that she suffered discrimination because she was falsely perceived as having AIDS. (At that time, the ADA did not exist, so Sanchez could sue in state court only.)

The state appeals court agreed with her, ruling that Lagoudakis should pay lost wages, costs and attorney fees totaling more than $33,000.

But the state supreme court overturned that decision, arguing that Lagoudakis' concerns were valid. According to the court, a PWA is especially susceptible to infectious conditions, such as TB, and poses a special risk to restaurant patrons. So, the court reasoned, if a restaurant owner "reasonably" suspects (the rumors sufficed) that a waitress has AIDS, he should be able to stop her from working until her doctor certifies she does not. The court ruled that rumors about Sanchez provided a reasonable basis for Lagoudakis to require her to produce a medical certificate.

Let's examine these assertions. Immunocompromised people are vulnerable to infections, some of which may be spread by serving food—but not to anyone whose immune system is unimpaired. If otherwise healthy restaurant servers with HIV pose an infectious-disease risk, early on in the epidemic there would have been outbreaks among restaurant patrons traced to servers with AIDS, and the Centers for Disease Control and Prevention would have issued guidelines excluding people with AIDS from working in restaurants. But it hasn't, and it shouldn't.

If a waitress is coughing or has bleeding or weeping lesions—from any medical condition at all—a medical determination is in order. But that wasn't Sanchez; apparently healthy, she was booted solely due to a rumor. What if she came back with a statement from her doctor that she had AIDS but was healthy enough to work? From Lagoudakis' testimony, it sounds like that would have done her little good at Paradise Family.

It is amazing that any court in 1998 would find no legal violation in these circumstances. Unfortunately, there is no appeal to the U.S. Supreme Court from a decision interpreting a state law, so the Michigan high court has the last word. If this incident occurred today in Michigan, a food server could seek a remedy under the federal ADA, and one hopes that federal judges would be more receptive to the case. But the Michigan court insisted that its opinion was consistent with the ADA, so one never knows.

Disability laws are supposed to prevent what happened to Sanchez. Certainly, we can't rest easy on the laurels of passing the ADA and comparable state laws. Much work remains to ensure that courts do not perpetrate such travesties of justice against people affected by HIV.

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